FILED

SEP 30 2010

DEPARTMENT OF REAL ESTATE

BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of TIMOTHY N. HURLBUT, Respondent.	DRE No. H-36115 LA OAH No. L-2009080829

DECISION AFTER REJECTION

Mark E. Harman, Administrative Law Judge ("ALJ") Office of Administrative Hearings, State of California, heard this matter on January 25, 2010, in Los Angeles, California.

Cheryl Keily, Counsel for the Department of Real Estate ("Department"), represented Robin Trujillo, Deputy Real Estate Commissioner ("Complainant").

TIMOTHY N. HURLBUT ("Respondent"), represented himself in the proceedings, and was present and testified at hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 25, 2010. On April 1, 2010, the ALJ issued a Proposed Decision which I declined to adopt as my Decision herein.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would

decide the case upon the record, the transcript of proceedings held on January 25, 2010, and upon written argument offered by Respondent and Complainant. Complainant submitted argument on September 7, 2010. Respondent did not submit further argument.

I have given careful consideration to the record in this case, including the transcript of proceedings of January 25, 2010. I have also considered the arguments submitted by Complainant. The following shall constitute the Decision of the Real Estate Commissioner ("Commissioner") in this proceeding:

FINDINGS OF FACT

1. On July 15, 2009, Complainant filed the Accusation in her official capacity. Respondent timely submitted a Notice of Defense, which contained a request for a hearing

2. On July 30, 2009, in companion Case No. H-36147 LA, the Commissioner, acting in his official capacity, filed a Desist and Refrain Order ("Order") under Business and Professions Code ("Code") section 10086 directing seven individuals and entities, including Respondent HURLBUT, to desist and refrain from engaging in activities requiring a real estate broker license without having the proper license. Respondent HURLBUT requested a hearing on the Commissioner's Order. The hearing on the Accusation and on the Desist and Refrain Order were consolidated and heard on January 25, 2010. At the request of the Department, separate Decisions were rendered. In Case No. H-36147 LA, the Desist and Refrain Order issued by the Commissioner to Respondent HURLBUT was upheld, effective May 11, 2010.[1]

3. Respondent is presently licensed as a real estate salesperson under the Real Estate Law (Part 1 of Division 4 of the Code). Respondent was first licensed by the Department in November of 2007.

a. Between November 26, 2007 and September 24, 2008, Respondent was licensed to act as a salesperson under the employment and supervision of Angelina-Ayden, Inc. ("AAI"), a corporate real estate broker. At that time, AAI, which also does business as Power

[1] This Decision after Rejection pertains solely to the matter of the Accusation against Respondent, in Case No. H-36115 LA.

Lending, was located at 806 E. Lincoln Avenue, Orange, California 92865.

b. Between September 25, 2008 and April 29, 2009, Respondent was not employed by a broker and his license was therefore inactive.

c. Between April 30, 2009 and July 16, 2009, Respondent was employed by Advantage Mortgage as his employing broker.

d. Since July 17, 2009, Respondent has not been employed by a broker and his license is therefore inactive.

4. In May of 2007, shortly before obtaining his real estate salesperson license, Respondent formed a California corporation named Tim Hurlbut Inc. ("THI"), with its principal place of business on record with the Secretary of State at 1142 E. Lincoln Ave. #150, in Orange, California. Respondent was the sole officer of THI. In April 2008, Respondent, as "THI", filed a new fictitious business name statement in the Office of the Orange County Clerk-Recorder ("County") indicating that "THI" was doing business as "OK to Walk," located at 806 E. Lincoln Avenue, Orange, California. Also in April 2008, Respondent, as "THI", made application to do business within the City of Orange ("City") under the business names "OK to Walk," "OK to Modify," and "OK to Settle." Respondent cancelled his business license with the city on July 31, 2008.

5. Beginning in 2007, Respondent was employed as a loan officer and sales manager of Power Lending, under the corporate broker license of AAI. Alan Verzani ("Verzani"), Kevin Derosier ("Derosier"), and Michael Barnett ("Barnett") were also employed at Power Lending. In early 2008, the lending business was slowing down. Respondent and his business associates, Barnett, Verzani, and Derosier, decided to start a loan modification business to service borrowers who were in need of financial assistance and were not able to qualify for refinancing through Power Lending. The loan modification business involved soliciting distressed borrowers and offering to negotiate with lenders to, among other things, modify the terms of existing loans, to obtain new loans for more favorable terms and/or to negotiate the terms of a short sale. In around April of 2008, they began doing business as "OK to Walk," "OK

to Modify," and "OK to Settle," out of Power Lending offices located at 806 E. Lincoln, Orange, CA and out of nearby offices located at 834 E. Lincoln Ave., Orange CA.[2] Respondent supervised Barnett, Verzani and Derosier at Power Lending, and also in the loan modification business. According to Respondent, he knew that neither Barnett, Verzani, nor Derosier were licensed by the Department in any capacity. The loan modification activities were undertaken without supervision of AAI.[3]

6. Respondent and his associates created letterhead and standardized loan modification agreements for the loan modification entities, which reflected an address of 834 E. Lincoln Avenue, Orange CA 92865, along with the fax number for Power Lending. In as early as April or May of 2008, Respondent and other Power Lending employees began soliciting applications and information from consumers interested in loan modification services. Some of the consumers submitted information or applications to Respondent. Several were referred to a law firm. It is not known how many consumers entered into contractual relationships with Respondent or the business entities he controlled.

7. In June or early July, 2008, Respondent hired Barnett as one of his employees of "OK to Walk" or "OK to Modify." Respondent knew that Barnett was not licensed by the Department in any capacity. Respondent knew that Barnett was soliciting consumers who could be interested in loan modification services which would include having Barnett and OK to Walk or OK to Modify negotiate with lenders to either modify the terms of existing loans, refinance into new loans, or work out the terms of a short sale of the property.

8. At a time no later than July 8, 2008, Mike Barnett, as a representative of OK to Walk, solicited borrower Ijeoma Maduakor ("Maduakor") and offered to provide loan modification services in exchange for the payment of a fee. On July 8, 2008, Barnett obtained

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[2] 834 E. Lincoln Ave., Orange, CA was not licensed as a branch office for AAI or Power Lending.

[3] Respondent did not mention what input, if any, he sought from his supervising employing broker at AAI.

Maduakor's signature on a loan modification agreement with OK to Walk. On or about July 31, 2008, Maduakor paid an advance fee of $2,500.00 to Barnett for modification services to be provided by OK to Walk. Maduakor subsequently received a phone call from OK to Walk associate Kevin Derosier, to confirm that the advance fee check had cleared the bank. OK to Walk never provided modification services to Maduakor. Maduakor later attempted to visit the offices of OK to Walk at 834 E. Lincoln Avenue, Orange CA and found them to be vacant. She was informed that the representatives had moved to the Power Lending offices down the street.

9. At a time no later than July 17, 2008, Mike Barnett, as a representative of Respondent's businesses, OK to Modify and OK to Walk, solicited borrower Joe and Mercy Udeochu and offered to provide loan modification services in exchange for payment of advance fees. On July 28, 2008, Barnett obtained Joe Udeochu's ("Udeochu's") signature on a loan modification agreement. Between August 4, 2008 and August 8, 2008, Udeochu paid Barnett $2,500.00 as an advance fee for loan modification services. On August 22, 2008, Udeochu received a call from Derosier, who indicated that he was Barnett's boss at Power Lending. He assured Udeochu that the modification was in progress. On August 29, 2008, Udeochu visited 834 E. Lincoln Avenue in Orange. Neither Barnett nor Derosier were there, but Udeochu was able to leave a message for Derosier with another individual at that location. Udeochu also obtained a business card for Michael Barnett, which indicated that he was an account executive for OK to Walk at that address. OK to Walk and OK to Modify never provided any loan modification services to Joe Udeochu and did not respond to requests for a refund.

10. Respondent testified that while developing his loan modification businesses, he consulted with attorneys and other professionals, and sought their input in the written materials, including those which were used to solicit advance fees. Respondent admitted that he was aware of laws regulating real estate activities that could apply to his loan modification business and the collection of advance fees, but he insisted that the details of the legal requirements were vague to him. Nonetheless, Respondent did not submit these materials to the

Department for review prior to use.[4]

11. Respondent testified that in late July of 2008, he became uncomfortable with the legal responsibilities of the loan modification business, and decided that he would not engage in any advance fee arrangements with clients. At a staff meeting with his loan modification business associates, it was discussed that the others that Barnett and Verzani would take over the business. On or about July 31, 2008, Respondent cancelled the business licenses with the City. Shortly thereafter, Verzani filed new fictitious business name statements with the County for "OK to Walk," and "OK to Modify." Although Respondent claimed to have transferred all of his business interests in "OK to Walk" to Alan Verzani Inc. in early August 2008, no documentation of the transfer was offered.[5]

12. Respondent testified at hearing that Barnett obtained and used the loan modification agreements in the two transactions set forth above without Respondent's permission. Respondent claimed that he had no direct or indirect contact with the two consumers in those transactions. The ALJ found this testimony credible. In addition, Barnett signed a letter received into evidence as administrative hearsay to corroborate these claims. However, Barnett was acting as an agent for Respondent's solely owned, unlicensed company when he took consumers' money. The advance fee was collected in exchange for a written promise that OK to Walk and/or OK to Modify would conduct loan modification activities. No services were in fact provided, and Respondent and his associates refused to refund or account for the advance fees collected. In addition, Respondent offered no evidence of any effort to assist or refund the borrowers' funds after learning Barnett had collected their money.

13. At hearing, Respondent did not admit that he engaged in misconduct and did not take full responsibility for ensuring that he conducts business in compliance with the law.

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[4] In his Proposed Decision, the ALJ wrote that Respondent "intended" to submit these materials to the Department for approval. No evidence is in the record that he in fact did so.

[5] Cancellation of business licenses with the City and filing of new (additional?) fictitious business names with the County does not necessarily evidence Respondent's cessation of involvement with the ongoing business altogether.

CONCLUSIONS OF LAW

1. Respondent violated Code Section 10130 by engaging in conduct requiring a real estate broker license when only licensed as a salesperson.

(a) Evidence presented at hearing established that Respondent engaged in conduct requiring a broker's license under the provisions of Code Section 10131(d). Specifically, Respondent solicited borrowers for loans, and offered to negotiate with lenders on behalf of borrowers to modify the terms of existing loans, renegotiate new loans, and/or negotiate the terms of short-sales in exchange for the payment of advance fees. Respondent's activities envisioned that compensation for his activities would be paid to Respondent's corporation THI, which operated under the fictitious business names of "OK to Walk," and "OK to Modify." Whether or not Respondent received actual compensation from the solicited borrowers, a reasonable inference can be drawn that Respondent expected to receive compensation from these borrowers for performing loan modification services. Furthermore, Respondent's activities resulted in the collection of illegal compensation in the form of advance fees from several consumers by representatives of Respondent's unlicensed loan modification business.

(b) A salesperson may not conduct activities requiring a broker license without being employed, supervised and compensated through a licensed broker. (Code Sections 10132 and 10137; Grand v. Greisinger, 160 Cal.App.2d 397, 399-412 (1958)). Respondent's salesperson license did not permit him to engage in business activities requiring a real estate broker unless he did so in the employ and under the supervision of a licensed broker.

2. Cause exists to revoke or suspend Respondent's real estate salesperson license pursuant to Business and Professions Code Section 10177(d) due to Respondent's violation of Code Section 10130.

3. Cause does not exist to revoke or suspend Respondent's real estate salesperson license pursuant to Code Section 10177(g). Respondent's conduct was willful or intentional, and not the result of negligence.

4. Cause exists to revoke or suspend Respondent's real estate salesperson license pursuant to Code Section 10177(j) for engaging in dishonest dealing. Respondent's conduct, in establishing a loan modification business and soliciting borrowers therefore without having a real estate broker license and outside the supervision of his then employing broker, was willful and intentional. Respondent failed to comply with the Real Estate Law when he decided to offer loan modification services to consumers through THI and OK to Walk. Respondent was engaged in an unlawful real estate practice. If he did not know this was a violation, he should have known.

5. The disciplinary provisions of the Real Estate Law are designed to protect the public and to achieve the maximum protection for those dealing with real estate licensees. In this case, Respondent has not admitted that he engaged in misconduct by acting in the capacity of a real estate broker while only a salesperson. Indeed, he and his business associates intentionally structured their operations so as to appear to be under the supervision of AAI, while actually being conducted separately and entirely without broker supervision. Respondent's has therefore demonstrated his unwillingness and inability to abide by the provisions of the Real Estate Law within the bounds of broker supervision. Having found cause for discipline, the burden shifts to Respondent to establish mitigating circumstances or rehabilitation. In this case, Respondent has not done so.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent TIMOTHY N. HURLBUT under the Real Estate Law are revoked.

This Decision shall become effective at 12 o'clock noon on OCT 20 2010

IT IS SO ORDERED 9/29/2010.

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

FILED

MAY 12 2010

DEPARTMENT OF REAL ESTATE

BY: [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of TIMOTHY N. HURLBUT, Respondent.	No. H-36115 LA L-2009080829

NOTICE

TO: TIMOTHY N. HURLBUT, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 1, 2010, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 1, 2010, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on January 25, 2010, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of January 25, 2010, at the Los Angeles

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office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: May 10, 2010

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. H-36115 LA
TIMOTHY N. HURLBUT,	OAH No. 2009080829
Respondent	

PROPOSED DECISION

This matter was heard on January 25, 2010, by Mark Harman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), in Los Angeles. It was heard in conjunction with a related matter entitled *In the Matter of the Desist and Refrain Order Against Tim Hurlbut Inc., et al.* (agency case no. H-36147; OAH no. 2009090171).

Robin Trujillo (Complainant) was represented by Cheryl D. Keily, Real Estate Counsel, Department of Real Estate (Department). Timothy N. Hurlbut (Respondent) represented himself.

Evidence was presented and the matter was submitted for decision on January 25, 2010. On February 8, 2010, the ALJ received a letter from Complainant's counsel explaining that the related matters, although based on similar factual allegations, arose under separate legal applications, and therefore, the ALJ was requested to prepare a separate proposed decision for each matter. The letter was marked for identification as exhibit 8. Complainant's request is granted; a separate proposed decision shall be issued concurrently in OAH no. 2009090171.

FACTUAL FINDINGS

1. On July 15, 2009, Complainant, a Deputy Real Estate Commissioner, acting in her official capacity, filed an Accusation under Business and Professions Code[1] section 10177 seeking to suspend or revoke Respondent's real estate salesperson license based on certain alleged activities. Respondent requested a hearing on the Accusation, and this matter ensued.

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[1] All further statutory references are to the Business and Professions Code, unless specified otherwise.

2. Respondent is presently licensed as a real estate salesperson under the Real Estate Law (§ 10000 et seq.). In November 2007, the Commissioner issued Respondent a real estate salesperson's license, at which time he entered the employ of Angelina-Ayden, Inc., doing business as Power Lending, at 806 East Lincoln Avenue, Orange, California 92865, and he remained employed there until September 2008. His real estate salesperson license will expire in November 2011, unless renewed.

3. In May 2007, Respondent formed a California corporation named Tim Hurlbut, Inc. (THI), with its principal place of business on Lincoln Avenue in Orange, California. At all times relevant, Respondent was the sole officer of THI. In April 2008, THI filed a new fictitious business name statement in the Office of the Orange County Clerk-Recorder (County) indicating that THI was doing business as "OK to Walk," located at 806 E. Lincoln Avenue, Orange, California. Also in April 2008, THI made application to do business within the City of Orange (City) under the business names "OK to Walk," "OK to Modify," and "OK to Settle." According to the City's business license records, this business was closed on July 31, 2008.[2]

4. Beginning in 2007, Respondent was a loan officer for, and later, he became the sales manager for, Power Lending. Alan Verzani, Kevin Derosier, and Michael Barnett (Barnett) were also employed at Power Lending. In early 2008, residential lending fell sharply. In April 2008, Power Lending was shutting down. Clientele were searching for other means to cope with their mortgage problems. Respondent began researching ways of starting his own business offering loan modification services using the names "OK to Walk" and "OK to Modify."

5. Respondent consulted with attorneys and other professionals. These professionals prepared sample agreements, including an advance fee agreement, which Respondent intended to submit to the Department for approval. Respondent was aware of the laws regulating real estate brokerage activities that could apply to the business model he was developing, but the details of the legal requirements were vague to him. Respondent and other Power Lending employees began soliciting applications and information from consumers interested in loan modification services as early as April or May 2008. Some of the consumers submitted information or applications to Respondent. Several were referred to a law firm. It is not known how many consumers entered into contractual relationships with Respondent or the business entities he controlled while he pondered whether to proceed in business.

6. In June or early July 2008, Respondent "hired" Barnett as one of his employee of "OK to Walk" or "OK to Modify." Respondent knew Barnett was not a real estate licensee. He knew that Barnett was soliciting consumers who could be interested in loan modification services.

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[2] A declaration by Rosalie Brooks, Senior Finance Clerk, City of Orange, was received in evidence as administrative hearsay. (Exhibit A.)

7. Eventually Respondent became uncomfortable with the legal responsibilities of the proposed business model and decided that he would not engage in any advanced fee for service arrangements with clients. On July 28, 2008, he notified his employees, including Barnett, of his decision to discontinue operations of his business, and he instructed Barnett not to accept any advance fees from consumers. Respondent maintains that he never authorized Barnett to accept advance fees from consumers. Respondent asserts that Barnett was acting outside the scope of his authority when he solicited consumers Ijeoma Maduakor (Maduakor), and Joe and Mercy Udeochu (Udeochu), and received advanced fees from them. The Maduakor and Udeochu transactions are the primary basis for the Accusation.

8 In mid-July 2008, Barnett solicited two consumers, Maduakor and Udeochu, for loan modification services using written agreements identifying "OK to Walk" or "OK to Modify" as the company providing the loan modification services. These contracts were identical to the samples prepared by Respondent's consultants. These contracts required the consumers to pay an advance fee to the company. Barnett directed Maduakor and Udeochu each to pay $2,500, and directed them to make their checks payable to M.B.I., Inc. Barnett endorsed, and cashed or deposited, these consumers' checks in early August 2008. These conclusions are supported by Maduakor's and Udeochu's declarations and attached exhibits. (Exhibits 6 and 7.)

9. Respondent credibly testified that Barnett obtained and used these written agreements without Respondent's permission. He claimed that he had no direct or indirect contact with Maduakor or Udeochu. Barnett, in fact, signed a letter, which was received in evidence as administrative hearsay ((Exhibit F), in which Barnett admitted to using these contracts and receiving advance fees without Respondent's knowledge. This letter corroborated Respondent's testimony. There was no evidence contradicting Respondent's version of these events. Barnett, however, was acting as an agent for THI when he made these transactions. These activities required a real estate broker license under section 10130 et seq., because Barnett solicited consumers for loan modification services and contracted for an "advance fee" for these services, as that term is defined in section 10026.[3]

10. Respondent claims that he transferred all of his interest in "OK to Walk" to Alan Verzani Inc. (AVI) in early August 2008. In fact, AVI filed with the County a change to the fictitious business name statement for "OK to Walk" in

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[3] Under section 10131, subdivision (d), a real estate broker is defined as a person who solicits borrowers or lenders for, or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with, loans secured by real property. Barnett and THI solicited consumers to perform loan modification services, which comes within this definition, and charged them an "advance fee." Section 10026 defines an "advanced fee" as "a fee demanded, charged, received, collected or contracted from a principal for . . . soliciting borrowers or lenders for, or to negotiate loans on . . . real estate."

August 2008, indicating that AVI was the registered owner; however, Respondent never filed an "Abandonment" indicating that THI was no longer a registered owner under this fictitious business name statement.

Mitigating and Other Evidence

11. Respondent consulted attorneys and non-attorneys to prepare the loan modification services contracts and advance fee agreements. He submitted a draft advance fee agreement to the Department anticipating that this could satisfy the legal requirements. He believed that, as long as he did not charge an advance fee for loan modification services, he was not obligated to obtain a real estate broker license. After he was already receiving applications from consumers, he realized he did not understand the legal requirements and attempted to revoke any authority he had given to his employees. Although he believes he committed no misconduct, in fact, he failed to comply with the legal requirements. This led to Barnett's misappropriation of consumers' funds, in the amount of $5,000, which have not been repaid; however, Complainant did not establish that Respondent had a fraudulent or malicious intent to violate the laws. Respondent expressed some remorse for these losses, but insists Barnett was acting alone or as an employee of AVI when Barnett accepted the consumers' money in August 2008. Currently, Respondent is working in the area of "debt settlement" in conjunction with an attorney; he has not been actively using his real estate salesperson license for more than one year.

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LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's real estate salesperson license under section 10177, subdivision (d),[4] as set forth in factual finding numbers 4 through 9. Between April and July 2008, Respondent and his wholly owned corporation, THI, were willfully engaged in soliciting borrowers to perform loan modification services without holding a license as a real estate broker, in violation of section 10130, as set forth in factual finding numbers 2 through 9. The Accusation cites two transactions of which Respondent was unaware. The evidence at hearing, however, established that Respondent or his company solicited borrowers to perform loan modification services as early as April 2008. Respondent received no compensation from the solicited borrowers, but a reasonable inference can be drawn that Respondent expected to receive compensation from these borrowers for performing loan modification services once he resolved some of the issues with his business plan. Respondent decided at a later time to abandon his business plan, but this does not significantly alter the analysis.

2. Cause does not exist to revoke or suspend Respondent's real estate salesperson license under section 10177, subdivision (g), as set forth in factual finding numbers 4 through 9 and legal conclusion number 1. Respondent's conduct is deemed to have been willful, or intentional, and not the result of negligence.

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[4] Section 10177 provides, in pertinent part, that:

> The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following, or may suspend or revoke the license of a corporation, . . . if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:
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> [¶] . . . [¶]
>
> (d)Willfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner.
>
> [¶] . . . [¶]
>
> (g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.
>
> [¶] . . . [¶]
>
> (j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

3. Cause does not exist to revoke or suspend Respondents' real estate brokers' licenses under section 10177, subdivision (j), as set forth in factual finding numbers 4 through 9. Complainant has not established that Respondent's misconduct involved fraud or dishonesty.

4. Having found cause for discipline, the burden shifts to Respondent to establish mitigating circumstances or rehabilitation. Respondent failed to comply with the Real Estate Law when he decided to offer loan modification services to consumers through THI and OK to Walk. Respondent was engaged in an unlawful real estate practice. If he did not know this was a violation, he should have known; however, it has not been shown that his misconduct was fraudulent or malicious.

5. Respondent has not admitted that he engaged in misconduct, so there is little evidence of rehabilitation other than his expression of remorse for the losses incurred by the consumers who dealt with Barnett. The purpose of the licensing laws is to protect the public, not to punish the individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Respondent's failure to understand the ramifications of his business plan and to conduct his business according to legal requirements is a serious matter. Respondent was willing to rely on others to ensure that his business in all respects complied with the law, rather than being responsible and conducting his own due diligence. Consideration is given to Respondent's attempt to extricate from the business once he deduced the problems that it involved, but at that point he had allowed too much illegal activity to proceed. Respondent can no longer claim any ignorance in these matters. Under all these circumstances, a period of suspension is appropriate and necessary for the protection of the public.

ORDER

not adopted

All licenses and licensing rights of Respondent, Timothy N. Hurlbut, under the Real Estate Law are suspended for a period of 60 days from the effective date of this Decision.

April 1, 2010

Mark E. Harman
Administrative Law Judge
Office of Administrative Hearings

CHERYL D. KEILY, SNB# 94008
Department of Real Estate
320 West Fourth Street, Ste. 350
Los Angeles, California 90013

Telephone: (213) 576-6982
(Direct) (213) 576-6905

FILED
JUL 15 2009
DEPARTMENT OF REAL ESTATE
By: [signature]

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation

TIMOTHY N. HURLBUT,

Respondent.

No. H-36115 LA

A C C U S A T I O N

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against TIMOTHY N. HURLBUT ("Respondent"), aka Tim Hurlbut, is informed and alleges as follows:

1.

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

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2.

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate salesperson.

3.

On the dates set forth below, Respondent, using the name "OK To Walk," engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than a broker who then employed him.

a. On or about July 31, 2008, Respondent collected an advance fee of $2,500 from Ijeoma Maduakor pursuant to the provisions of a written agreement pertaining to loan modification services to be provided by Respondent with respect to a loan secured by the real property located at 1744 E. Helmick, Carson, California 90746.

b. On or about August 4, 2008, Respondent collected an advance fee of $1,000 from Joe and Mercy Udeochu (the "Udeochus") pursuant to the provisions of a written agreement pertaining to loan modification services to be provided by Respondent with respect to a loan secured by the real property located at 19707 Reinhart Avenue, Carson, California 90746. Thereafter, on or about August 8, 2008, Respondent collected an additional advance fee of $1,500 pursuant to the same written agreement from the Udeochus.

4.

Based on the information contained in Paragraph 3, above, Respondent performed and/or participated in loan modification activities which require a real estate broker license under the provisions of Code Sections 10131(d) and 10131.2 during a period of time when Respondent was not licensed by the Department as a real estate broker nor employed as a real estate salesperson by a broker on whose behalf the activities were performed.

5.

The conduct, acts and/or omissions of Respondent violate Code Section 10130, and are cause for the suspension or revocation of the licenses and license rights of Respondent pursuant to Code Sections 10177(d) and/or 10177(g) and/or 10177(j).

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all the licenses and license rights of Respondent TIMOTHY N. HURLBUT under the Real Estate Law, and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 14 day of July, 2009.

Robin Trujillo
Deputy Real Estate Commissioner

cc: TIMOTHY N. HURLBUT
Advantage Mortgage
Robin Trujillo
Sacto.